Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES

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STANLEY FRANCIS CERMAK, SR.,
and RAYMOND CERMAK, SR.,
Petitioners,

v.

BRUCE BABBITT,
Respondent.

==========

On Petition for Writ of Certiorari
to the United States Court of Appeals for the
Federal Circuit

==========

PETITION FOR WRIT OF CERTIORARI

==========

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QUESTIONS PRESENTED FOR REVIEW

I: Whether the "Indian Land Certificates" issued by the Bureau of Indian Affairs for land in the State of Minnesota should be characterized by this Supreme Court as "allotments" for purposes of federal law and for purposes of obtaining federal jurisdiction at the United States District Court level?

II: Whether the Department of the Interior and its BIA have effected an unconstitutional taking of property rights to which John Cermak's heirs had a legal expectancy?

III: Whether Public Law 96-557 permits the the Department of the Interior to unilaterally cut off rights to land assignments held by John Cermak or to dispossess his heirs of their rights?

CORPORATE DISCLOSURE STATEMENT

There are, as between the parties identified in the case caption here, no non-governmental corporate parties to this litigation.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Stanley Francis Cermak, Sr., and Raymond Cermak, Sr., ask that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Federal Circuit, *Stanley Francis Cermak, Sr., and Raymond Cermak, Sr., Appellants, vs. Bruce Babbitt, Appellee*, Civil File 00-1098 (Fed. Cir. 2000), submitted October 4, 2000, and filed of record December 13, 2000..

OPINIONS BELOW

This Petition seeks review of the unreported decision of the United States Court of Appeals for the Federal Circuit, *Stanley Francis Cermak, Sr., and Raymond Cermak, Sr., Appellants, vs. Bruce Babbitt, Appellee*, Civil File 00-1098 (Fed. Cir. 2000), submitted October 4, 2000, and filed of record December 13, 2000, reprinted on page 1a of the Appendix. Judgment was entered December 13, 2000, reprinted on page 17a of the Appendix. This appellate decision affirmed the unpublished decision of The Honorable David Doty of the United States District Court for the District of Minnesota, *Stanley Francis Cermak, Sr., and Raymond Cermak, Sr., vs. Bruce Babbitt, Appellee*, District Court File No. 98-1248, filed June 12, 1999, reprinted beginning at page 19a of the Appendix, which granted summary judgment in part in favor of the defendant which transferred the case to the United States Court of Federal Claims. A previous appeal to the United States Court of Appeals for the Eighth Circuit had been ordered transferred by that Court on November 17, 1999, to the Federal Circuit, Order reprinted at page 18a of the Appendix.

STATEMENT OF JURISDICTION

This petition seeks to review the decision of the United States Court of Appeals for the Federal Circuit, filed December 13, 2000. Therefore, this United States Supreme Court's jurisdiction is properly based on 28 U.S.C. § 1254. This petition is filed within 90 days of the Court of Appeals' entry of its final decision, 17a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution,Amendment V, No person shall be...deprived of... property without due process of law....

Pub. L. No. 96-557, 94 Stat. 3262.

28 U.S.C. § 1353.

Every one of these Constitutional and Statutory Provisions were raised by the Cermaks as early as the Complaint in this matter.

STATEMENT OF THE CASE

John Cermak, a direct lineal descendent of the Mdewakanton, the "friendly Sioux," held two land assignments, Certificates 63 and 64 from the United States Department of the Interior through the Bureau of Indian Affairs. Each land assignment states on its face that:

> The said John Cermak and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the

> the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his or her heirs occupy and use said land.
>
> * * *
>
> It is also declared that this certificate is not transferable, and that any sale, lease, transfer or incumbrance of the said land, or any part thereof to any person or persons whomsoever, except it be to the United States, and as herein provided, is and will continue to be utterly void and of no effect.

The text of Land Certificate No. 64 is contained in the Appendix at 24a. The only difference between the two certificates is the legal description of each individual 25-acre tract.

The terms of the Certificates indicate that only John Cermak and his heirs have rights to the use of the land described in the two Certificates. The heirs of John Cermak have repeatedly asked that the United States or the Shakopee Tribe issue land assignments in favor of these heirs, assignments to be had from the two 25-acre assignments held by John Cermak, but these have never come. Every single direct heir of John Cermak has been rebuffed in efforts to gain the land identified under these Land Certificates.

The Bureau of Indian Affairs has asserted that the Shakopee Mdewakanton Sioux Community of Minnesota has the sole and exclusive right to

determine what persons may hold land assignments, relying on language that the United States will hold such land "in trust," 24a, for the Shakopee Community, Public Law 96-557.

The Indian Land Certificates involved in this case indicate that "John Cermak and *his heirs* are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use of said Indian, so long as said allottee *or his or her heirs* occupy and use said land," 24a, (Emphasis added.)

The same Certificates contain language which "utterly void(s)" any transfer of the "land, or any part thereof to any person or persons whomsoever, except it be to the United States...," 24a. The sole condition permitting the loss of the land rights evidenced by these Indian Land Certificates is their abandonment by John Cermak. John Cermak did not abandon these parcels as John's death certificate shows his on-going residence on his land assignment at Prior Lake until his death.

John's son, Stanley Cermak, and his grandson, Raymond Cermak, have repeatedly requested that their property interests as direct descendants of John Cermak be enforced by the United States against the Shakopee Mdewakanton Sioux Community.

The Shakopee community and the BIA cite Public Law 96-557 for the legal authority to take and to distribute John Cermak's land assignment to persons other than the heirs of John Cermak. The

statute enacted by Congress, here Public Law 96-557, law as of December 19, 1980, confirms that Congress did not choose to alienate property or to change its status under any "assignment entered into or issued prior to enactment of this Act" since "[n]othing in this Act shall...alter, or require the alteration, of [any such assignment]." The two land assignments issued to John Cermak were issued in 1944, dozens of years before the Act.

REASONS WHY THE WRIT SHOULD ISSUE

I: The "Indian Land Certificates" issued by the Bureau of Indian Affairs for land in the State of Minnesota should be characterized by this Supreme Court as "allotments" for purposes of federal law and for purposes of obtaining federal jurisdiction at the United States District Court level.

The United States' trust responsibility extends to individual Indians, *United States v. Holliday*, 70 U.S. 407 (1865).

A Federal District Court should have jurisdiction to hear this Cermak matter under 28 U.S.C. § 1353, which states, "The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty." The Indian Land Certificates at issue here should be considered

allotments for purposes of assigning jurisdiction to the district courts. "Allotment is a term of art in Indian law. It means a selection of specific land awarded to an individual allottee from a common holding." *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 142 (1972) (citations omitted).

Counsel for the Secretary of the Interior suggested, and the District Court agreed, as did the Federal Circuit, that John Cermak's land certificates were not allotments and, therefore, did not fall within the ambit of § 1353. Such a position flies in the face of the plain reading of the statute and prior judicial interpretation of what constitutes an allotment under Indian law. The Indian Land Certificates issued to John Cermak relate simply that Cermak stands as the *allottee* of the land. The fact that the Department of the Interior has devised special classifications concerning the rights and responsibilities of different types of Indian land has no relevance to this Supreme Court's jurisdiction to determine the rights of Native Americans to their land. To alter the jurisdiction of federal courts based upon the shifting meanings of the word "allotment" as defined by the Department of the Interior creates a confusing landscape which leaves the Native American plaintiff at the mercy of the Department and renders 28 U.S.C. § 1353 largely meaningless.

The Bureau of Indian Affairs did not accept jurisdiction to probate the will of John Cermak under the Indian Probate Act, which provides for exclusive federal jurisdiction. The inheritance rights of Petitioners Stanley Cermak and Ray Cermak have

never been determined by a court of competent jurisdiction. As shown in *Blanset v. Cardin*, 256 U.S. 319, 325 (1921), the death of an allottee does not affect the trust status of land; and trust property is not subject to State or to Tribal jurisdiction. There is no obvious legal difference between allotted land and the Cermak land held under a land assignment in that either form of trust property can be inherited by direct heirs of a holder. Any other result leads to the unfair and unjust situation displayed in the present case.

The Federal Circuit found that the Cermak land assignments are not formal allotments under the General Allotment Act of 1887, 25 U.S.C. Sections 331-354, even though the precise language of the Cermak Indian Land Certificates uses the very term "allotee" to describe the person holding the property under these Certificates. No one doubts that a formal allotment may be devised by a will where the will has been approved by the Secretary of the Interior. 25 U.S.C. § 373; F. Cohen, *Handbook of Federal Indian Law* (1982 ed.), p. 634. It is clear that the Cermak land assignments, by their own express terms, do not reflect communal property held by the Shakopee Community and so subject to what might be characterized as only a life estate, an interest which cannot be devised. Instead, Cermak held an allotment.

Louise Bluestone Smith v. William Haliburton et al., Civil No. 4-82-549 (D. Minn. 1982) (dismissed for failure to exhaust administrative remedies), interpreted the status of land assignments as interests which might be inherited. *Bluestone* also suggested

Bureau of Indian Affairs that do not permit a land use to be inherited. The normative rules of construction propose that with this panoply of interests available, the BIA and the Department of the Interior cannot evade the clear language of the Indian Land Certificates which demonstrates that Cermak's interest in the two 25-acre parcels at the Shakopee reservation could be legally passed down to his heirs.

II: The Department of the Interior and its BIA have effected an unconstitutional taking of property rights to which John Cermak's heirs had a legal expectancy.

The Federal Circuit stated in dicta that the decision of whether or not the Land Certificates transferred an interest in land would be left to the Court of Federal Claims, Federal Circuit decision at fn. 2, 14a. However, the Court of Federal Claims cannot consider this part of the claim raised by Cermaks. The Cermaks' claims could be split between a claim for equitable relief in the form of the return of their real property heard by the District Court and a claim for money damages for lost use of the same real property, *United States v. County of Cook, Ill.*, 170 F.3d 1084, 1089 (Fed. Cir. 1999.

While each Indian Land Certificate issued to John Cermak is admittedly not a deed, the law concerning the interpretation of language included in the deed is instructive in determining what weight should be given to the terms used. The language of the deed is the starting point when determining the parties' intent. See 9 *Thompson on Real Property, Thomas*

parties' intent. See 9 *Thompson on Real Property, Thomas Edition* (David A. Thomas ed. 1994) 408. "Where the language and its meaning is adjudged definite and unambiguous, the court is required to give effect to such language, even though this meaning may not be, in fact, what the parties intended. When a court finds that the parties' intent is revealed by the plain and unambiguous language of the instrument, technically the deed is not being construed, since there is no language requiring construction." *Id.* at 408-409.

The same result is found in contract law. Under Minnesota law, the court must give the language of the contract its plain and ordinary meaning and interprets the contract so as to give meaning to all of its provisions. *Boat Dealers' Alliance, Inc. v. Outboard Marine Corp.*, 182 F.2d 619, 621 (8th Cir. 1999).

The plain language of the document executed by the Commissioner of Indian Affairs demonstrates that these two 25-acre parcels are inheritable by the heirs of John Cermak, here Stanley Cermak and his children. The same documents contain language which "utterly void(s)" any transfer of the "land, or any part thereof to any person or persons whomsoever, except it be to the United States...." The sole condition permitting the loss of the land rights evidenced by these Indian Land Certificates is their abandonment by John Cermak. John Cermak did not abandon these parcels as John's death certificate shows his on-going residence on his land assignment at Prior Lake.

The Secretary of the Interior suggests that these land assignments did not include any interest that might be inherited by the heirs of the former holder of a land assignment. The government's analysis ignores the actual language of the Certificate itself, which indicates that the land assignment includes an interest that passes to the heirs of the person holding the land assignment.

It is clear that Congress did not want to interfere in the reasonable expectations of the heirs of John Cermak and did not. However, the Bureau of Indian Affairs has ignored the clear language of the law and forced the heirs of a direct descendent of those Sioux living in Minnesota on May 20, 1886, from their land. This is untenable under the Constitution and under the trust responsibilities of the United States toward individual Indian citizens. The land assignments at issue illuminate John Cermak's status as a direct descendant of the Sioux who resided in "Minnesota [on] May 20, 1886."

Complete alienation or loss of a property right will not be tolerated by the United States Supreme Court. In *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), as reiterated in *Hodel v. Irving*, 481 U.S. 704 (1987), the Court offered an analysis appropriate to the current case: The reviewing court must consider the economic impact on the property owner and define what the property holder has lost. *Hodel* stated that the "right to pass on valuable property to one's heirs is itself a valuable right," at 701. Such dicta reflects simple common sense. When the tribe in *Hodel* and the United States

through the BIA here attempted to totally abrogate the right to pass on to one's heirs a share in a property interest in tribal land, that abrogation amounted to an unconstitutional taking. The Supreme Court held unconstitutional the Indian Land Consolidation Act.

III: Public Law 96-557 does not permit the the Department of the Interior to unilaterally cut off rights to land assignments held by John Cermak or to dispossess his heirs of their rights.

Each "Indian Land Certificate" states on its face that:

> the said John Cermak and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his or her heirs occupy and use said land.
>
> * * *
>
> It is also declared that this certificate is not transferable, and that any sale, lease, transfer or incumbrance of the said land, or any part thereof to any person or persons whomsoever, except it be to the United States, and as herein provided, is and will continue to be utterly void and of no effect.

24a.

Public Law 96-557 states that "[n]othing in this Act shall (1) alter, or require the alteration, of any rights under

any...assignment entered into or issued prior to enactment of this Act." Based on the plain language of the "Indian Land Certificates" and the Public Law, John Cermak had an interest in the two Certificates at issue which he could expect to pass on to his heirs; and nothing in P.L. 96-557 altered any of his or his heirs' rights to those Certificates or the land itself.

The claim by the Department of the Interior, seconded by other members of the Shakopee community, that John Cermak or his heirs are without legal claim to these land assignments is wrongheaded. Cermaks had resided on this Indian land as one of the Mdewakanton Sioux for years before the present reservation had even been organized. The rights of the Cermak family as direct descendants of the friendly Sioux cannot be obliterated simply because the Department has allowed the present tribal administration to take Cermaks' land for its own purposes or for the purposes of other members of the Tribe.

United States v. Sioux Nation of Indians, 448 U.S. 371 (1980), explains that *Shoshone Tribe v. United States*, 299 U.S. 476 (1937), concedes Congress' paramount power over Indian property, but holds, nonetheless, that "[t]he power does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation." *Id.*, at 497 (quoting *United States v. Creek Nation*, 295 U.S. 103, 110 (1935)).

The Senate Select Committee of Indian Affairs Report notes that "[t]he rights of individuals to whom an interest has already been assigned are protected under the provision of Section 3 of the bill." The analysis section of

report provides that the status of certain land held by individuals who resided in Minnesota on May 20, 1886, and their descendants, land with the same character as that held by John Cermak, would continue in that status. Secondly, the law concerns itself with land acquired under the Indian Reorganization Act of 1934, land which does not have the same character as that land held under a land assignment by John Cermak. The heirs of John Cermak have not only been deprived of their rights to land on the reservation as direct descendants of John Cermak; the heirs of John Cermak have been deprived of compensation for the illegitimate taking of their rights to his land assignment.

No one has accepted the responsibility of compensating the Cermak family for the loss of their land assignment rights. The United States itself is directly liable to the Cermaks and should replace the 50 acres of land that should have devolved to this family.

The United States itself could readily provide other comparable land within the Twin Cities Metropolitan area and place this land into trust in favor of the Cermaks who are direct descendants of the friendly Sioux. Any other result means that the United States continues a policy of dispossessing Indians by means of legerdemain.

The position of the United States in the present case (and, by implication, the Shakopee tribe), is that allowing Cermaks their property rights would be problematic. This is at the least self-serving if not duplicitous.

CONCLUSION

For all these reason, the decision of the United States Court of Appeals for the Federal Circuit should be reversed in part so that as to the claims for the return or equivalent replacement of the property represented by the Indian Land Certificates, the matter be returned with instructions for trial before the United States District Court for the District of Minnesota. The claims for damages for loss of the use of the property may continue before the Court of Federal Claims.

Dated at St. Paul, Minnesota, this 12th day of March, 2001.

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United States Court of Appeals for the Federal Circuit

00-1098

STANLEY F. CERMAK, SR. and RAYMOND CERMAK, SR.,

Plaintiffs-Appellants,

v.

BRUCE BABBITT, Secretary of Interior,

Defendant-Appellee.

Lawrence H. Crosby, Crosby & Associates, of St. Paul, Minnesota, argued for plaintiffs-appellants.

David J. Lazerwitz, Attorney, Environmental & Natural Resources Division, Department of Justice, of Washington, DC, argued for defendant-appellee. With him on the brief were Lois J. Schiffer, Assistant Attorney General; and David C. Shilton, Attorney.

Appealed from: United States District Court for the District of Minnesota

Senior Judge David S. Doty

United States Court of Appeals for the Federal Circuit

00-1098

STANLEY FRANCIS CERMAK, SR. and
RAYMOND CERMAK, SR.,

Plaintiffs-Appellants,

v.

BRUCE BABBITT, Secretary of the Interior,

Defendant-Appellee.

DECIDED: December 13, 2000

Before MAYER, Chief Judge, LOURIE, and SCHALL, Circuit Judges.

SCHALL, Circuit Judge.

Stanley Francis Cermak, Sr. and Raymond Cermak, Sr. (collectively, the "Cermaks") are, respectively, the son and grandson of John Cermak. In 1944, the Department of the Interior (the "Department") assigned two parcels of land to John Cermak through the issuance of two Indian Land Certificates. After John Cermak's death in 1989, the Department canceled the land assignments. The Department asserted that the Cermaks have no rights in the parcels and that the Department instead holds the land in trust for the Shakopee Mdewakanton Sioux Community.

The Cermaks sued the Department in the United States District

Court for the District of Minnesota ("district court" or "court"), claiming that the Department had wrongfully deprived them of their rights in the two parcels of land. The Cermaks' complaint asserts that they have a right to occupy the land described in the Certificates and asks the court to order the Department to place the land into an Indian Land Certificate in their favor. The Cermaks also seek, in the alternative, damages in excess of $50,000 for the taking of their property.

The Department challenged the district court's jurisdiction over the Cermaks' claims. The Cermaks' complaint cites 28 U.S.C. §§ 1346 and 1353 as the basis for the district court's jurisdiction over their claims. The district court determined that 28 U.S.C. § 1346 does not confer it with jurisdiction over the claims because the Cermaks were seeking more than $10,000 in damages. Cermak v. Babbitt, No. 98-1248, slip op. at 5 (D. Minn. July 12, 1999) (order). The court also determined that 28 U.S.C. § 1353 does not confer it with jurisdiction over their claims because their claims do not concern an allotment of land, as required by that statute. Id., slip op. at 6. The court therefore held that it did not have jurisdiction over the Cermaks' claims, and transferred the case to the United States Court of Federal Claims. Id. The Cermaks appealed the transfer to the United States Court of Appeals for the Eighth Circuit, which transferred the appeal to this court. Cermak v. Babbitt, No. 99-3135 (8th Cir. Nov. 17, 1999) (judgment). We have jurisdiction over the Cermaks' appeal pursuant to 28 U.S.C. § 1292(d)(4)(A).

We agree with the district court that neither 28 U.S.C. § 1346 nor 28 U.S.C. § 1353 confer it with jurisdiction over the Cermaks' claims. As the district court noted, § 1346 confers district courts with jurisdiction over claims against the United States that do not exceed $10,000. Because the Cermaks assert that they have been damaged in excess of $50,000, § 1346 does not provide a basis for the district court's jurisdiction over their

claims. Section 1353 confers district courts with jurisdiction over civil actions "involving the right . . . to any allotment of land under any act of Congress or treaty." 28 U.S.C. § 1353. However, because we hold that the Indian Land Certificates at issue did not effect "allotments" of land, this statute also fails to provide a basis for the district court's jurisdiction over the Cermaks' claims. Accordingly, we affirm the district court's order transferring the Cermaks' case to the United States Court of Federal Claims.

BACKGROUND

I.

After the Sioux uprising in 1862, Congress terminated the trust status of the Sioux Reservation in Minnesota. Brewer v. Acting Deputy Assistant Sec'y - - Indian Affairs (Operations), 10 I.B.I.A. 110, 113-14 (1982). At the same time, it permitted some members of the Mdewakanton Sioux (the "friendly Sioux") to remain in Minnesota. Id. at 115. Pursuant to several acts of Congress, the Department purchased land in Minnesota and issued Indian Land Certificates to certain of the friendly Sioux, including John Cermak. See id. at 115-117.

Each Certificate at issue states:

> It is hereby certified that John Cermak, a member of the Mdewakanton band of Sioux Indians residing in Minnesota, has been assigned the following described tract of land . . . in Scott County, Minnesota, containing 25 acres, more or less.
>
> It is also certified that the said John Cermak and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said

> Indian, so long as said allottee or his or her heirs occupy and use said land. If said land should be abandoned for two years by the allottee, then said land shall be subject to assignment by the Secretary of the Interior to some other Indian . . . .
>
> It is also declared that this certificate is not transferable, and that any sale, lease, transfer or incumbrance [sic] of the said land, or any part thereof to any person or persons whomsoever, except it be to the United States, and as herein provided, is and will continue to be utterly void and of no effect. It is further declared that said land is exempt from levy, taxation, sale, or forfeiture, until otherwise provided by Congress.

When John Cermak died in 1989, his heirs asked the Department to probate his will. The Department refused, stating that it would probate estates only if the deceased Indian possessed an ownership interest in Indian Trust Lands, and asserting that John Cermak did not possess such an interest in the land at issue. The Department explained that the land encompassed by the Certificates was not individually owned land, but instead was land owned by the Shakopee Mdewakanton Sioux Community (the "Community") and held in trust by the United States for the Community's benefit.

In July of 1990, at the request of the Community, the Department canceled the Certificates that had been issued to John Cermak. The heirs of John Cermak pursued separate challenges of the Department's actions. In May of 1994, Sharon Gitchel, acting as conservator for three of John Cermak's grandchildren, petitioned the Department to place the grandchildren in possession and occupancy of the land. When the Department denied the petition, Gitchel appealed to the Interior Board of Indian Appeals ("IBIA"). The IBIA affirmed

the agency's decision, determining that the Certificates did not give John Cermak any inheritable interest in the land. Gitchel v. Minneapolis Area Director, Bureau of Indian Affairs, 28 I.B.I.A. 46 (1995).

In July of 1996, Raymond Cermak, Sr. petitioned the Department to reopen the issue of the Cermaks' rights to the land. The Department denied Mr. Cermak's petition, explaining that the Indian Land Certificates conveyed only "life use" rights that could not be inherited. The Department also cited the IBIA decision in Gitchel and the IBIA's determination that the land at issue was not individually owned, but was held in trust for the Community. Mr. Cermak appealed this decision to the IBIA, which dismissed the appeal.

II.

The Cermaks brought this suit in the district court on April 27, 1998. Their complaint sets forth two causes of action. The first cause of action alleges that the Department "breached its trust responsibility" to the Cermaks by not allowing them full use of the land described in the Certificates. The Cermaks assert that this breach deprived them of their land "without compensation and in derogation of the explicit language" of the Certificates. The Cermaks allege that they were harmed "in excess of $50,000" by the loss of their rights in the land. The second cause of action alleges that the Department violated the Takings Clause of the United States Constitution by participating in the taking of a property interest from the Cermaks without providing compensation. The Cermaks assert that the Department should be ordered to place the land at issue into an Indian Land Certificate in their favor or, in the alternative, to compensate the Cermaks for the loss of the use of the land.

The Department moved to dismiss the Cermaks' complaint for

lack of jurisdiction. In considering this motion, the court determined that the gravamen of the Cermaks' complaint is that the Department has "unlawfully taken their property and given it to the Community." Cermak, slip op. at 3. The court noted that the Cermaks sought an Indian Land Certificate in their favor or, alternatively, compensation for losses which they value at more than $50,000. Id. at 4.

The court noted that 28 U.S.C. § 1346 gives it jurisdiction over certain takings claims against the United States. Id. However, the court determined that there are two relevant limitations on the takings claims which it may entertain. Id. First, the relief available is limited to just compensation, and does not include equitable remedies. Id. Second, regional district courts do not have jurisdiction over claims for compensation greater that $10,000; those claims must be brought in the Court of Federal Claims. Id. at 4-5. In view of these limitations, the court held that § 1346 does not give it jurisdiction over the Cermaks' claim for injunctive (equitable) relief or for compensation in excess of $50,000. Id. at 5.

The court also considered whether 28 U.S.C. § 1353 gives it jurisdiction over the Cermaks' claims. This statute provides, in relevant part, that "[t]he district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty." 28 U.S.C. § 1353. The court determined that the Department has consistently taken the position that lands held under Indian Land Certificates were never "allotted" and, in 1980, became "tribal lands held by the Department in trust." Id. at 5 (citing Brewer, 10 I.B.I.A. at 118-19). The court stated that it was obligated to "adopt the Department's reasonable interpretation of the statutory scheme it has been charged . . . with enforcing." Id. The court therefore held that the Cermaks' Certificates did not effect allotments and,

consequently, that § 1353 does not confer it with jurisdiction over their claims. Id. at 6.

Instead of dismissing the Cermaks' case, the district court transferred the case to the Court of Federal Claims, in accordance with the parties' suggestion. Id. The Cermaks appealed the transfer to the Court of the Appeals for the Eighth Circuit, which transferred the appeal to this court pursuant to the Department's motion. Cermak v. Babbitt, No. 99-3135 (8th Cir. Nov. 17, 1999) (judgment). As set forth above, we have jurisdiction pursuant to 28 U.S.C. § 1292(d)(4)(A).

DISCUSSION

We review a district court's decision to transfer a case to the Court of Federal Claims for lack of subject matter jurisdiction de novo. James v. Caldera, 159 F.3d 573, 578 (Fed. Cir. 1998). To determine whether the district court has jurisdiction over the Cermaks' claims, we must focus on the language of the Cermaks' complaint. Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir. 1997). "[I]t is the plaintiff's statement of the claims that determines whether the case is within the competence of the court." Id. As the district court correctly determined, the gravamen of the Cermaks' complaint is that the Department has unlawfully taken their property. The relief requested in the complaint is an Indian Land Certificate issued in their favor, or, alternatively, damages in excess of $50,000.

To establish the district court's jurisdiction over their claims against the United States, the Cermaks must establish both that the district court has subject matter jurisdiction over the claims and that the United States has waived its sovereign immunity with respect to those claims. Kanemoto v. Reno, 41 F.3d 641, 643-44 (Fed. Cir. 1994). The Cermaks' complaint bases the district court's jurisdiction on 28 U.S.C. § 1346 and 28 U.S.C.

§ 1353. Although the complaint also makes reference to 28 U.S.C. § 1331, it is well-established that § 1331 "does not by itself operate as a waiver of sovereign immunity," id. at 644, and the Cermaks do not rely on this statute in their appeal. Accordingly, the only issue before us is whether § 1346 or § 1353 permits the district court to entertain the Cermaks' claims.

I.

Jurisdiction Under 28 U.S.C. § 1346

Section 1346 provides that district courts have subject matter jurisdiction over certain claims against the United States, including those that are founded on the Constitution. 28 U.S.C. § 1346. This statute, together with the corresponding jurisdictional statute for the Court of Federal Claims, 28 U.S.C. § 1491, also constitutes a waiver of sovereign immunity with respect to the prescribed claims. United States v. Mitchell, 463 U.S. 206, 212 (1983). However, this waiver extends only to claims for monetary damages, and does not extend to claims for equitable relief. Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997). Sections 1346 and 1491, therefore, constitute waivers of sovereign immunity with respect to the Cermaks' claim for damages for the alleged taking of the property described in the Certificates, but do not constitute waivers of sovereign immunity with respect to their claim for injunctive relief——the issuance of an Indian Land Certificate in their favor.

Although the Cermaks cite § 1346 as providing a basis for the court's jurisdiction over their claims, this statute limits the jurisdiction of district courts to claims that do not exceed $10,000. 28 U.S.C. § 1346. Because the Cermaks seek damages greater than $10,000, this statute does not confer the district court with jurisdiction over their claims.

II.

Jurisdiction Under 28 U.S.C. § 1353

As set forth above, § 1353 confers district courts with jurisdiction over "any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty." 28 U.S.C. § 1353. The Supreme Court has interpreted the corresponding provision of the General Allotment Act, 25 U.S.C. § 345, as "contemplat[ing] two types of suits involving allotments: suits seeking the issuance of an allotment . . . and suits involving the interests and rights of the Indian in his allotment or patent after he has acquired it." United States v. Mottaz, 476 U.S. 834, 845 (1986) (internal quotations omitted); see also id. at 844 n.8 (referring to 28 U.S.C. § 1353 as the "corresponding provision governing district court jurisdiction"). As noted above, the Cermaks claim that the Department wrongfully deprived them of their rights in the two parcels of land at issue. This claim implicates the second type of suit identified by the Court. As a predicate for this type of suit, there must be an existing allotment.

The district court determined that § 1353 does not confer it with jurisdiction over the Cermaks' claims because the Indian Land Certificates issued to John Cermak did not effect "allotments." The Cermaks challenge this determination on appeal. The nature of the property interests transferred by the Certificates is a question of law, which we review de novo. Karuk Tribe of Cal. v. Ammon, 209 F.3d 1366, 1373 (Fed. Cir. 2000).

The Cermaks rely on the language of the Certificates themselves to establish that the property interests were allotments. Specifically, the Cermaks cite the Certificates' references to John Cermak as an "allottee" as supporting their contention that

the Certificates effected allotments of land. The Cermaks argue that the district court's jurisdiction, as provided in § 1353, should not depend on the Department's definition of the term "allotment." The Cermaks also argue that, even if the Certificates did not effect formal allotments, the property rights transferred to John Cermak were devisable and inheritable.

In response, the Department argues that "allotment" is a term of art that has a very specific meaning. Specifically, an allotment involves the "selection of specific land awarded to an individual allottee from a common holding." Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 142 (1972). Under the General Allotment Act of February 8, 1887, 24 Stat. 388 (current version at 25 U.S.C. §§ 331, 334, 339, 341, 342, 348, 349, 354 and 381), "Congress authorized the executive branch to . . . allot to individual Indians substantially all reservation lands . . . suitable for agricultural purposes." County of Thurston, Neb. v. Andrus, 586 F.2d 1212, 1218 (8th Cir. 1978). "Under this system[,] the United States retained legal title to each parcel of allotted land as trustee for the individual Indian allottee." Id. "The Indian's beneficial interest in the property was recorded on a trust patent." Id. At the end of the trust period, the Department could issue a patent in fee simple to the allottee. Id. at 1219.

The Department argues that the Indian Land Certificates issued to John Cermak could not have effected allotments because Congress terminated the allotment program in 1934, ten years before the Certificates were issued. See 25 U.S.C. § 461 ("[A]fter June 18, 1934, no land of any Indian reservation . . . shall be allotted in severalty to any Indian."). The Department also argues that it has consistently held that Indian Land Certificates such as those issued to John Cermak did not effect allotments. See Brewer, 10 I.B.I.A. at 118 (stating that "[t]he Department's position concerning these lands has . . .

consistently been that they were . . . never allotted"). The Department explains that the lands at issue were acquired pursuant to appropriation acts that authorized the Secretary of the Interior ("Secretary") to buy land for the benefit of certain Mdewakanton Sioux Indians and that gave the Secretary discretion to determine how the appropriated funds should be expended. See Act of June 29, 1888, 25 Stat. 217, 229; Act of March 2, 1889, 25 Stat. 980, 992; Act of August 19, 1890, 26 Stat 336, 349. The Department argues that when the Secretary authorized the issuance of Indian Land Certificates to assign rights in these lands, he intended that they convey rights of temporary use and occupancy, not permanent rights in the land itself. The Department argues that this policy is different from that behind the General Allotment Act, which provided for the eventual transfer of title to the individual Indian allottees.

We have carefully considered the Cermaks' arguments. We are persuaded, however, that the Indian Land Certificates issued to John Cermak did not effect allotments. The land at issue was purchased by the Secretary of the Interior with funds appropriated by Congress with instructions that the Secretary expend the funds "in the purchase, in such manner as in his judgment he may deem best, of agricultural implements, cattle, horses, and lands." Act of June 29, 1888, 25 Stat. 217, 229; see also Act of March 2, 1889, 25 Stat. 980, 992 (appropriating $10,000 "to be expended by the Secretary . . . in the purchase, as in his judgment he may think best, of such lands, agricultural implements, seeds, cattle, horses, food, or clothing"); Act of August 19, 1890, 26 Stat 336, 349 (appropriating $8,000 "to be expended by the Secretary . . ., as in his judgment he may think best, for such lands, agricultural implements, buildings, seeds, cattle, horses, food, or clothing"). Congress did not specify how the Secretary should dispose of the land purchased with the appropriated funds, other than requiring that the funds be used

"[f]or the support of [certain members of] the Medawakanton [sic] band of Sioux Indians." Act of June 29, 1888, 25 Stat. 217, 229; Act of March 2, 1889, 25 Stat. 980, 992; Act of August 19, 1890, 26 Stat 336, 349. The record reveals that the Secretary elected to convey only temporary use and occupancy rights to individual Indians, and used Indian Land Certificates to effect the assignment of these rights. Letter from E. B. Meritt, Assistant Commissioner, to the Secretary of the Interior (Sept. 30, 1915). The record also reveals that, as of 1915, the Department was awaiting legislation that would authorize the allotment of land that had been assigned by Indian Land Certificates. Id. However, such legislation never was enacted.[1] See Brewer, 10 I.B.I.A. at 118. Because Congress provided the Secretary with discretion to determine how best to use the land at issue to benefit the Indians, and because the Secretary chose not "to dispose of any permanent interest in [the] lands," Letter from E. B. Meritt, Assistant Commissioner, to the Secretary of the Interior, supra, we hold that the Indian Land Certificates did not effect allotments.

The Certificates' references to John Cermak as an "allottee" do not compel a determination that the Certificates effected allotments. Although the Certificates use the term "allottee," they do not state that the land has been "allotted," but instead use the more general term "assigned." Additionally, the Certificates lack the language that was required by the General Allotment Act to appear in trust patents issued thereunder, such

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1 Although the Department cites 25 U.S.C. § 461 as prohibiting the allotment of the land at issue, no evidence of record indicates that the land was reservation land encompassed by that statute. We therefore do not rely on § 461 to support our determination that the Certificates did not effect allotments.

as a statement that the United States is holding the land in trust for the allottee for a limited trust period and will transfer the land to the allottee in fee at the end of the trust period. See 25 U.S.C. § 348.

Congress' most recent legislation regarding this land supports our determination that it was never allotted. In the Act of December 19, 1980, Pub. L. No. 96-557, 94 Stat. 3262, Congress provided that "all right, title, and interest of the United States in those lands . . . which were acquired and are now held by the United States for the use or benefit of certain Mdewakanton Sioux Indians . . . are hereby declared to hereafter be held by the United States . . . in trust for the Shakopee Mdewakanton Sioux Community of Minnesota." Congress could not have changed the trust status of the land if it had been allotted to individual Indians. See Brewer, 10 I.B.I.A. at 118 (noting that the enactment of the 1980 Act reflected Congress' approval of the Department's position that the land at issue had not been allotted).

In view of our determination that the Certificates issued to John Cermak did not effect allotments of land, we hold that 28 U.S.C. § 1353 does not provide a basis for the district court's jurisdiction over the Cermaks' claims.[2]

III.

The Cermaks' Claim for Equitable Relief

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2 In holding that the Indian Land Certificates did not effect allotments of land as that term is used in § 1353, we do not intend to imply that the Certificates did not transfer an interest in land that was devisable and inheritable. We leave the resolution of that issue to the Court of Federal Claims.

The Cermaks argue that their case should not be transferred to the Court of Federal Claims because that court does not have jurisdiction to order the equitable relief they seek——the return of their property. The Government responds by arguing that the transfer to the Court of Federal Claims is proper because that court has exclusive jurisdiction over the Cermaks' claim for monetary damages in excess of $10,000, and because the Cermaks have not cited any waiver of sovereign immunity that might permit the district court to entertain their claim for equitable relief.

If the district court had jurisdiction over the Cermaks' claim for equitable relief, it might have been possible to split the Cermaks' case between the Court of Federal Claims, which has exclusive jurisdiction over their claim for monetary damages, and the district court, which would have exclusive jurisdiction over their claim for equitable relief. See United States v. County of Cook, Ill., 170 F.3d 1084, 1089 (Fed. Cir. 1999) (noting that "suits against the United States may be brought in the district courts in some circumstances and in the Court of Federal Claims in other circumstances," and holding "that [28 U.S.C.] § 1631 allows for the transfer of less than all of the claims in a civil action to the Court of Federal Claims"). However, the Cermaks have not pointed to any authority which would permit us to conclude that the district court has jurisdiction over their claim for equitable relief. As discussed above, in order for a court to have jurisdiction over a claim against the United States, the United States must have waived its sovereign immunity with respect to that claim. However, none of the statutes cited by the Cermaks (28 U.S.C. §§ 1331, 1346, and 1353) constitute a waiver of sovereign immunity with respect to their claim for equitable relief. Without a basis for holding that the district court has jurisdiction over their equitable claim, we must reject the Cermaks' argument that the transfer to the Court of Federal

Claims is improper merely because the Court of Federal Claims cannot award the equitable relief they seek.

At oral argument for this appeal, there was some discussion as to whether the Cermaks might have been able to obtain equitable relief if they had challenged the Department's actions in a claim brought under the Administrative Procedure Act ("APA"). See 5 U.S.C. § 702 ("A person suffering a legal wrong because of agency action . . . is entitled to judicial review thereof."); 5 U.S.C. § 704 ("[F]inal agency action for which there is no other adequate remedy in a court . . . [is] subject to judicial review."). It appears that the Cermaks could have sought review of the IBIA decision by bringing an APA action in the district court. See, e.g., Smith v. Babbitt, 96 F. Supp. 2d 907 (D. Minn. 2000) (considering a challenge to an IBIA decision under the APA). Moreover, it appears that, if such an APA action had been brought, the district court may have been able to order the equitable relief the Cermaks seek. See 5 U.S.C. § 706 ("The reviewing court shall . . . set aside agency action . . . found to be [unlawful]."); see also Youpee v. Babbitt, 67 F.3d 194 (9th Cir. 1995) (affirming the district court's award, in an APA action, of injunctive relief against the Department of the Interior). However, because the Cermaks did not pursue a claim under the APA, the district court lacks jurisdiction over their case. Thus, the Cermaks will be limited to seeking monetary damages when this case proceeds on the merits in the Court of Federal Claims.

CONCLUSION

For the foregoing reasons, the order of the district court transferring this case to the court of Federal Claims is affirmed.

AFFIRMED

COSTS

Each party shall bear its own costs.

United States Court of Appeals for the Federal Circuit

00–1098

STANLEY F. CERMAK, SR. and
RAYMOND CERMAK, SR.,

Plaintiffs-Appellants,

v.

BRUCE BABBITT,
Secretary of the Interior,

Defendant-Appellee.

JUDGMENT

ON APPEAL from the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

in CASE NO(S). 98-CV-1248 DSD/JMM

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED: **AFFIRMED**

ENTERED BY ORDER OF THE COURT

DATED Dec 13 2000 /SS/
Jan Horbaly, Clerk

ISSUED AS A MANDATE: FEBRUARY 5, 2001

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 99-3135MNMI

Stanley Francis Cermak, Raymond Cermak, Sr., acting individually and under a power of attorney for Stanley F. Cermak, Sr.,	*	
Appellant,	*	Appeal from the United States District Court For the District of Minnesota.
v.	*	
Bruce Babbitt, Secretary of the United States Department of the Interior, and his agents, assigns, and successors in office,	*	
Appellee.	*	

JUDGMENT

Appellee's motion to transfer this appeal to the Court of Appeals for the Federal Circuit has been considered and is hereby granted. The case is ordered transferred and the clerk is directed to transmit the case file to the United States Court of Appeals for the Federal Circuit. (5361-010199)

November 17, 1999

A true copy
ATTEST: /SS/ Michael E. Gans
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 98-1248 (DSD/JMM)

Stanley F. Cermak, Sr., and
Raymond Cermak, Sr., acting
individually and under a power
of attorney for Stanley F. Cermak, Sr.,

Plaintiffs,

ORDER

v.

Bruce Babbitt, Secretary of the
United States Department of the Interior

Defendant.

Lawrence H. Crosby, Esq., Crosby & Associates, 630 Roseville Professional Center, 2233 Hamline Avenue North, Minneapolis, MN 55113, counsel for plaintiffs.

Mary Jo Madigan, Assistant United States Attorney, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, counsel for defendant.

This matter is before the court on defendant's motion to dismiss or, in the alternative, for summary judgment. Based on a review of the file, record, and proceedings herein, the court grants in part defendant's motion.

BACKGROUND

On May 11, 1944, the U.S. Department of the Interior

issued John Cermak Indian Land Certificates 64 and 65, each covering twenty-five acres in Scott County, Minnesota, on the Shakopee Mdewakanton Sioux Reservation. Each certificate states that "the said John Cermak and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his heirs occupy and use said land." John Cermak died on April 10, 1989, devising to his son Edward Cermak "the interest that I may have in the real property granted to me by Indian Land Certificates number 64 and number 65." Edward Cermak promptly requested that the Area Director of the Bureau of Indian Affairs ("BIA") begin probate proceedings. However, the BIA denied this request, concluding that these land assignments were not individually owned trust or restricted lands, but were instead held in trust for the Mdewakanton Sioux Community ("Community"). On July 2, 1990, the BIA, at the request of the Community, canceled the certificates.

On May 21, 1992, Edward Cermak died. Soon afterward, the conservator for the lineal descendants of Edward Cermak demanded that the BIA give the descendants possession of the property described in the certificates. The BIA denied this request, restating its position that the certificates did not convey an inheritable interest. On June 4, 1994, the Indian Board of Interior Appeals ("IBIA") affirmed the decision. See Gitchel v. Minneapolis Area Director, 28 IBIA 46 (1995). On June 27, 1996, plaintiff Raymond Cermak, Sr., grandson of John Cermak, requested, once again, that the Cermak family be placed in possession of the disputed land. The BIA Are Director denied this request, and the IBIA dismissed the subsequent appeal.

On April 27, 1998, Raymond Cermak and Stanley Cermak, Sr., Raymond's father, filed this action in federal district court. Defendant now brings an motion to dismiss or, in

the alterative, for summary judgment.

DISCUSSION

As a threshold matter, defendant contends that this court lacks jurisdiction over the Cermak's suit. The court agrees. The gravamen of the Cermaks' complaint is that the government has unlawfully taken their property and given it to the Community. See Plaintiffs' Complaint at ¶ 1 (requesting relief for "the taking of an interest in trust property-real property which should have descended to the legal heir of John Cermak but instead has been wrongfully taken without compensation by the [Community] with the cooperation and acquiescence of the Department of the Interior")'; id. at ¶ 20 (alleging in its "first cause of action" that defendant's "acts have deprived [plaintiffs] of this land or its use without just compensation"); id. at ¶ 23 (alleging in its "second cause of action" that defendants have violated the "takings clause of the Constitution" by "participat[ing] in a taking of a property interest from the rightful heirs of John Cermak"). The Cermaks' requested relief is that "defendant here should be directed by this Court to place the land at issue into a land certificate in favor of [plaintiffs], or, alternatively, to compensate these Cermaks for the loss of such use of this land," id. at ¶ 27, a property interest the Cermaks value at more than $50,000, see id. at ¶ 21.

In the Tucker Act, Congress has waived its sovereign immunity from certain private party suits, including takings claims. See 28 U.S.C. §§ 1346 & 1491. However, this waiver of sovereign immunity is conditioned it two ways relevant here: First, the relief available for a takings claim brought under the Act is limited to just compensation; a plaintiff may not seek equitable remedies. See Buffalo River Conservation & Recreation Council V. National Park Serv., 558 F.2d 1342, 1344 (8th Cir. 1977). Second, any claim for compensation greater than

$10,000 falls within the exclusive jurisdiction of the U.S. Court of Federal Claims. See Bayview, Inc. v. AHTNA, Inc., 105 F.3d 1281, 1285 (9th Cir. 1997); Weeks Constr., Inc. v. Oglala Sioux Hous. Auth., 797 F.2d 668, 674-75 (8th Cir. 1986). Accordingly, plaintiffs' claims for injunctive relief and just compensation in the amount of more than $50,000 are not properly before this court.

The Cermaks separately claim jurisdiction under 28 U.S.C. § 1353, which gives federal district courts jurisdiction over actions relating to the allotment of land to Indians under congressional act or treaty. However, the Department of Interior's "position concerning ... lands [held under Indian Land Certificate] has ... consistently been that they were not made available by Congress for allotment, were never allotted, and were therefore available in 1980 to become tribal lands held by the Department in trust." Brewer v. Acting Deputy Assistant Secretary - - Indian Affairs (Operations), 10 IBIA 110, 118-19 (1982) (detailing the Department's longstanding policy regarding Indian Land Certificates). As it must, the court will adopt the Department's reasonable interpretation of the statutory scheme it has been charged by Congress with enforcing. See Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 739-42 (1996); Chevron U.S.A. v. Natural Resource Defense Council, Inc., 467 U.S. 837, 842-45 (1984). The court concludes that the land certificates in dispute are not allotments and therefore do not fail within the jurisdiction ambit of § 1353.

CONCLUSION

For the foregoing reasons, the court concludes that it lacks jurisdiction to hear the Cermaks' claim. Rather than dismissing the suit, however, the court will follow the suggestion of both parties, see Plaintiffs' Opposition Memo. at 16 & Defendant's Reply Memo. At 1-2, and, pursuant to 28

U.S.C. § 1631, transfer the matter to the Court of Federal Claims, where plaintiffs may pursue the merits of their claim.

Accordingly, **IT IS HEREBY ORDERED** that

1. Defendant's motion is granted in part.
2. The case shall be transferred to the U.S. Court of Federal Claims pursuant to 28 U.S.C. § 1631.

Dated: July 12, 1999

/SS/
David S. Doty, Judge
United States District Court

INDIAN LAND CERTIFICATE. T. order: 6 2023-37-3132 40

No. 64

411 38

To all whom it may concern:

It is hereby certified that John Cermak, a member of the Mdewakanton band of Sioux Indians residing in Minnesota, has been assigned the following-described tract of land, viz:

Part of NE¼ of NE¼ of Sec. 33, T. 115 N., R. 22 W., beginning at the NE Corner of said section, thence east 1320 feet, thence South 825 feet, thence east 1320 feet, thence north 825 feet to the place of beginning

in Scott County, Minnesota, containing 25 acres, more or less.

It is also certified that the said John Cermak and his heirs are entitled to immediate possession of said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his or her heirs occupy and use said land. If said land should be abandoned for five years by the allottee, then said land shall be subject to assignment by the Secretary of the Interior to some other Indian who was a resident of Minnesota May 20, 1886, or a legal descendant of such resident Indian.

It is also declared that this certificate is not transferable, and that any sale, lease, transfer or incumbrance of the said land, or any part thereof to any person or persons whomsoever, except it be to the United States, and as herein provided, is and will continue to be utterly void and of no effect. It is further declared that said land is exempt from levy, taxation, sale, or forfeiture, until otherwise provided by Congress.

In testimony whereof, I, William Zimmerman, Jr., Commissioner of Indian Affairs, have hereunto set my hand and caused the seal of this office to be hereto attached at the City of Washington, D. C., this 11th day of May 1914

(Sgd) William Zimmerman Jr.
Asst. Commissioner of Indian Affairs

D. C., this 17th day of Sep 1951

E. REX LEE
Acting Commissioner of Indian Affairs

BEST AVAILABLE COPY